

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2026

Cir. Ct. No. 2010CV21527

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

ASSOCIATED BANK NATIONAL ASSOCIATION,

PLAINTIFF,

V.

TERRANCE LEAFBLAD,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-APPELLANT,**

V.

JEAN LEAFBLAD,

THIRD-PARTY DEFENDANT-RESPONDENT,

MICHAEL LEAFBLAD AND ESTATE OF RODNEY LEAFBLAD,

THIRD-PARTY DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. CONEN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 FINE, J. Terrance Leafblad appeals the circuit court’s order granting summary judgment to Jean Leafblad dismissing his third-party complaint against her that contended she was unjustly enriched. We affirm.

I.

¶2 Brothers Terrance, Michael, and Rodney Leafblad each owned one-third of the Leafblad Company. In December of 1992, the brothers signed a “Corporate Buy-Sell Agreement” that provided:

1. INSURANCE POLICIES. The parties agree to obtain and keep in effect three separate life insurance policies, naming respectively, TERRANCE W. LEAFBLAD, RODNEY N. LEAFBLAD, and MICHAEL J. LEAFBLAD, as insured. These policies shall each be in the amount of \$150,000.00, the premiums to be paid by COMPANY. Said policies shall in each case name LEAFBLAD COMPANY as sole beneficiary, and the distribution of the proceeds thereof shall be subject to the covenants and conditions as set out in this agreement.

2. PAYMENT OF PROCEEDS. Upon the death of an insured shareholder, COMPANY, within ninety (90) days from the date of said death, shall apply the insurance proceeds directly to the surviving spouse as payment for purchase of all outstanding shares of stock in which the spouse of the deceased insured shareholder has any interest. And shares purchased by COMPANY under this Agreement shall be considered treasury stock of COMPANY.

¶3 In March of 2006, the Company terminated Terrance Leafblad as an employee and officer because it contended that he “misappropriate[d] corporate funds for his own personal use.”¹ Terrance Leafblad remained a shareholder, however. In October of 2007, Rodney Leafblad died. The Company paid Rodney Leafblad’s wife, Jean Leafblad, the proceeds of Rodney Leafblad’s life insurance policy, \$203,648.94, to purchase Rodney’s shares of the Company.

¶4 When the Company dissolved four years later, it owed \$140,000 to Associated Bank. Associated Bank sued only Terrance Leafblad to collect the money because Michael Leafblad was bankrupt. Terrance Leafblad added a third-party claim against Jean Leafblad claiming that she was unjustly enriched when the Company paid her “Two Hundred Thousand Dollars” “for Rodney’s stock in the Company.” Terrance Leafblad contended that because the Buy-Sell Agreement said the insurance policy should be for \$150,000, that Jean Leafblad was paid “Fifty Thousand Dollars” “more than the amount stated in the Agreement.”

¶5 Both Terrance Leafblad and Jean Leafblad sought summary judgment. Both asserted that there were no material issues of disputed fact. Terrence Leafblad asked the circuit court to grant summary judgment to him on the ground that the Agreement spoke of a \$150,000 payment and the Company erroneously paid Jean Leafblad more than that. Jean Leafblad asked the circuit court to grant summary judgment to her because the Company properly complied with the Agreement when it paid her the proceeds of the life insurance policy,

¹ Terrence Leafblad avers that he was removed “without cause.” This does not affect resolution of this appeal.

which was \$203,648.94. The circuit court granted judgment in favor of Jean Leafblad.²

II.

¶6 A party is entitled to summary judgment if “there is no genuine issue as to any material fact” and that party “is entitled to a judgment as a matter of law.” WIS. STAT. RULE 802.08(2). We review *de novo* a circuit court’s ruling on summary judgment. *Johnson v. Mt. Morris Mutual Ins. Co.*, 2012 WI App 3, ¶8, 338 Wis. 2d 327, 332, 809 N.W.2d 53, 56 (Ct. App. 2011).

¶7 To prove unjust enrichment, a plaintiff must prove: (1) a benefit was “conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) acceptance or retention by the defendant or the benefit under circumstances making it inequitable for the defendant to retain the benefit without payment of its value.” *Puttkammer v. Minth*, 83 Wis. 2d 686, 689, 266 N.W.2d 361, 363 (1978).

² In a final order dated August 23, 2012, the circuit court granted Jean Leafblad’s motion and dismissed Terrance Leafblad’s unjust enrichment claim, “[f]or the reasons set forth on the Record at the Motion Hearing on July 23, 2012.” Terrance Leafblad has not included in the Record a transcript from that Motion Hearing; instead he noted on the “Statement on Transcript” form that “[a] transcript is not necessary for prosecution of this appeal.” We, therefore, do not know the circuit court’s reasons for granting summary judgment; however, because our review of the circuit court’s grant of Jean Leafblad’s motion for summary judgment is *de novo*, we decide the merits of Terrance Leafblad’s contention that the circuit court should not have granted summary judgment to her. Further, when the appellate record is incomplete in connection with an issue raised by the appellant, we assume that the missing material supports the trial court’s ruling. See *Duhamel v. Duhamel*, 154 Wis. 2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989).

¶8 In support of her motion for summary judgment, Jean Leafblad attached her affidavit, the Buy-Sell Agreement, and Michael Leafblad's affidavit. Jean Leafblad averred:

- She was "the surviving spouse of Rodney Leafblad."
- Rodney Leafblad and she "were joint owners of one-third of the stock of the Leafblad Company."
- After Rodney Leafblad died, the Company sent her a check "in the amount of Two Hundred Three Thousand Six Hundred Fort[y] Eight and 94/100 Dollars" "drawn on an account established by Northwestern Mutual."
- The check was "in exchange for the transfer of my shares of the Leafblad Company to it as directed by the Leafblad Company Corporate Buy-Sell Agreement."
- "The funds payable to me ... were the proceeds of the insurance policy on Rodney's life owned by the Leafblad Company, which it maintained pursuant to the terms of the Leafblad Corporate Buy-Sell Agreement."

¶9 As we have already seen, the Buy-Sell Agreement required the Company to "keep ... life insurance policies" for each brother "in the amount of \$150,000.00," and "[u]pon the death of an insured shareholder," the Company "*shall apply the insurance proceeds directly to the surviving spouse as payment for purchase of all outstanding shares of stock.*" (Emphasis added.).

¶10 Michael Leafblad averred that:

- “The Leafblad Company Corporate Buy-Sell Agreement provided that the Leafblad Company would purchase and maintain a separate life insurance policy insuring Terrance Leafblad, Rodney Leafblad, and me; the proceeds of which would be payable to the Leafblad Company and used to purchase the company stock owned by the surviving spouse.”
- “The Leafblad Company Corporate Buy-Sell Agreement was never revoked.”
- After Rodney Leafblad died, “the Leafblad Company issued Check No. 1001 drawn from Northwestern Mutual payable to Jean Leafblad in the amount of ... (\$203,648.94) to purchase her shares of the Leafblad Company pursuant to the terms of the Leafblad Company Corporate Buy-Sell Agreement.”
- “The funds payable to Jean Leafblad were the proceeds of the insurance policy on Rodney’s life owned by the Leafblad Company, which it maintained pursuant to the terms of the Leafblad Corporate Buy-Sell Agreement.”

¶11 Terrance Leafblad agreed that there were no disputed issues of material fact. He argued, however, that because in his view the Agreement unambiguously required a payment of \$150,000, the Company erroneously overpaid Jean Leafblad. He claimed that the circuit court should have reasonably inferred that the Company must have purchased a \$200,000 life insurance policy in violation of the Buy-Sell Agreement to explain the larger payout.

¶12 Terrance Leafblad did not provide any evidence to establish a disputed issue of fact in connection with his unjust enrichment claim. The undisputed facts at the time of summary judgment were: (1) the Company made the payment to Jean Leafblad under the Buy-Sell Agreement; and (2) the money she received was the proceeds from the insurance policy. Although the Buy-Sell Agreement referred to a \$150,000 policy, there is no dispute that the Agreement specifically directed that the Company “*shall apply*” the insurance proceeds to the surviving spouse. Michael Leafblad, the only remaining officer of the Company, swore that the \$203,648.94 paid to Jean Leafblad was “the insurance proceeds.” Therefore, the circuit court properly granted summary judgment and dismissed Terrance Leafblad’s unjust enrichment claim.³

¶13 Terrance Leafblad also faults the circuit court for not giving him additional time to find facts to support his belief that an additional insurance policy was purchased in violation of the Agreement. Whether to grant or deny a request by a party for additional time to supplement the summary-judgment materials, *see* WIS. STAT. RULE 802.08(4), is, however, a matter within the circuit court’s discretion. *See Mathias v. St. Catherine’s Hospital, Inc.*, 212 Wis. 2d 540, 554–555, 569 N.W.2d 330, 335 (Ct. App. 1997). As we have seen, Terrance Leafblad has not made part of the Record the transcript of the summary-judgment

³ Terrance Leafblad filed his notice of appeal on September 13, 2012. By motion filed with the circuit court on September 13, 2012, he sought to reopen the circuit court’s grant of summary judgment to Jean Leafblad. He contended in that motion that he had documentation that Leafblad Company actually purchased a policy for \$200,000. There is nothing in the Record to indicate that the circuit court ruled on Terrance Leafblad’s motion to reopen, which Jean Leafblad opposed. Thus, whatever documentation Terrance Leafblad has is not part of the Record, to which we are limited. *See State v. Flynn*, 190 Wis. 2d 31, 46 n.4, 527 N.W.2d 343, 349 n.4 (Ct. App. 1994).

hearing where the circuit court denied his request. *See Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 489–490, 727 N.W.2d 546, 557 (It is the appellant’s “responsibility to provide us with a [R]ecord that is sufficient to review the issue they raise.”). Without the transcript, we must presume that the circuit court did not erroneously exercise its discretion when it refused to grant a continuance. *See Duhamel v. Duhamel*, 154 Wis. 2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989).

¶14 We affirm.

By the Court.—Order affirmed.

Publication in the official reports is not recommended.

